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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 1110

GRAND LODGE HALL ASSOCIATION, I. O. O. F. OF INDIANA, A CORPORATION, ET AL.,

Appellants,

vs.

RALPH F. MOORE, AS AUDITOR OF MARION COUNTY, INDIANA, ET AL.,

Appellees.

APPELLANTS' PETITION FOR REHEARING.

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OTHNIEL HITCH,
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Appellants, Grand Lodge Hall Association, I. O. O. F. of Indiana, a corporation, William E. English Foundation, a corporation, and Indiana Pythian Corporation, respectfully move the Court to grant a rehearing of the above appeal and to withdraw the decision and judgment of affirmance entered in said cause without opinion on March 31, 1947 and as ground for such motion respectfully suggest that the decision in *Wisconsin & Michigan Railway Company* v. *Powers* (1903), 191 U. S. 379, which was alone cited as authority for affirmance of the judgment herein without opinion, is not decisive or controlling of this appeal for the reasons following:

(a) The tax exemption involved in that case was not contained in an act of incorporation but in a gen-

eral tax law, as appears from the opinion (191 U. S. 384) and is emphasized in the syllabus (191 U. S. 379).

(b) The tax exemption in that case was one of "the clauses in a scheme of taxation which happened to benefit certain parties" (191 U. S. 386) whereas in the instant case power or privilege of holding tax exempt property is conferred upon the same terms and conditions as the right to exist as a corporation and in the incorporating act itself, and wholly apart from the "general scheme" reenacted by the same legislature.

(c) To say of the Indiana Act of 1921, "that in view of the subject matter the legislature is not making promises but framing a scheme of public revenue and public improvement", and that "In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions" (191 U. S. 387) is patently unrealistic, since the only real benefits to be derived from incorporation under Chapter 246 of the Indiana Acts of 1921 were benefits to recipients of corporate charity and benefits to the public and to the State itself by reason of supplementing activities otherwise maintainable from public funds. Whatever decision he might ultimately have reached, we suggest that Mr. Justice Holmes would not have applied either of the above premises or the conclusion that "it does not address them, and therefore makes no promise to them" to the instant case.

(d) The statement that "It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute merely because their interest was obvious and their action likely on the face of the law" (191 U. S. 387) is equally inapplicable. "Interest" is here used in the sense of expectation of pecuniary gain "likely" to induce action, elements wholly lacking here, since whatever

pecuniary advantage arises from the corporate enterprise or flows from the tax exemption itself is prohibited to the corporators and members and must be devoted to religious, educational or charitable purposes. The fact that pecuniary "interest" was "obvious" and action "likely" is stressed equally with the fact that the parties were not "expressly addressed" (191 U. S. 387) and to apply this conclusion to deny the contractual nature of any and all corporate charters or charter privileges derived under general law, because the corporators, or donors of the corporate property are not "expressly addressed" is to attribute to Mr. Justice Holmes both profligacy in diction and murkiness of thought.

(e) Wether legal detriment induced by a condition attached to promissory language constitutes consideration binding a contract, or whether the inducement is a revocable gratuity (as in *Wisconsin & Michigan Railway* v. *Powers,* 191 U. S. 379) is stated by eminent authority to depend upon whether "a reasonable man would or would not understand that the performance of the condition was requested as the price or exchange for the promise". I. Williston, Contracts, Rev. Ed. Sec. 112, p. 380.

(f) Appellants respectfully refer to their "Brief Opposing Motion to Dismiss or Affirm" for statement of the grounds of reasonable understanding that the tax exemption of the Act of 1921 was intended to constitute a "contract".

(g) In conclusion, appellants suggest that the affirmance of this case upon authority of *Wisconsin & Michigan Railway* v. *Powers* (1903), 191 U. S. 379, can be interpreted as meaning (1) That no provision of a corporate charter acquired under general law is contractual because the incorporators are not "expressly addressed", or (2) That no tax exemption contained in such a charter can be deemed contractual. Since the cited case did not involve a charter tax exemption the court has in either alternative announced

a new principle without opinion and, it is respectfully submitted, without sufficient consideration. *Piqua State Bank* v. *Knoop*, (1853) 16 How. 369, not heretofore overruled, is authority contrary to either proposition.

WHEREFORE, appellants pray that rehearing be granted.

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The undersigned hereby certify that the foregoing petition is filed in good faith and not for delay.

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